

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of STEPHAN HUGHES and U.S. POSTAL SERVICE,
POST OFFICE, Lombard, IL

*Docket No. 98-2397; Submitted on the Record;
Issued April 13, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in rescinding acceptance of appellant's February 29, 1996 work injury claim and terminating his compensation benefits.

On March 3, 1996 appellant, then a 49-year-old mailhandler, filed a notice of traumatic injury and claim for compensation alleging that he sustained a back injury on February 29, 1996, while lifting tubs and bags of mail in the performance of duty. The Office accepted the claim for lumbar strain, sciatica and herniated discs at L2-3 and L4-5. Appellant received continuation of pay from February 29, 1997 to April 18, 1996 and wage-loss compensation. He has not returned to work since February 29, 1997.

The record indicates that appellant initially sought treatment at a local emergency room on March 1, 1996 for back pain and was also seen by his family physician, Dr. William J. Sarantos, a Board-certified internist, who prescribed physical therapy, medication and bed rest.

In a report dated March 4, 1996, Dr. Jeffrey Williamson-Link, a Board-certified internist, noted that appellant presented at a community clinic for pain in his low back with radiation to the left leg following a work injury on February 29, 1996 when he felt something pull in his back after lifting bags of mail. On physical examination, he noted that appellant had pain in the left lower back with radiation of the leg to 30 degrees and pain in the left lower back with "radiation to the right leg to approximately 45 degrees." Dr. Williamson-Link also recorded mild spasm and tenderness on palpation in the left lower paravertebral areas and pain over to the right sacrum and right buttock region. Based on a review of x-rays taken at the emergency room on March 1, 1996, he diagnosed a degenerative joint to a mild degree at L3-4 and L4-5. Dr. Williamson-Link further stated that appellant's history and physical were consistent with left-sided nerve root irritation. Appellant was directed to continue his care with his treating physician.

Appellant was subsequently hospitalized from March 24 until April 4, 1996 for back pain and received steroid injections. Under the direction of Dr. D.J. Harrison, a Board-certified neurosurgeon, appellant underwent diagnostic testing during his hospitalization. A computerized tomography (CT) scan of the lumbar spine, taken on March 29, 1996, showed “focal right posterolateral disc herniation of L2-3 intervertebral discs, mild wide based left posterolateral disc herniation of L4-5 intervertebral disc with associated osteophyte mainly encroaching the left neural foramen.” A magnetic resonance imaging (MRI) scan of the lumbar spine also revealed left posterolateral protrusion and small focal bulge of L4-5 and right posterolateral protrusion of L2-3. It was Dr. Harrison’s recommendation that appellant undergo surgery for his herniated disc, but appellant, declined to have surgery and opted for chiropractic treatment.

An electromyogram (EMG) of the lower extremities was performed on appellant on May 20, 1996 which found no evidence of a left lumbosacral radiculopathy or polyneuropathy.

Appellant was again hospitalized for back pain from June 29 to July 3, 1996. A MRI scan dated June 26, 1996 revealed a “right posterolateral disc herniation of L2-3” and “redemonstration of a small left posterolateral protrusion or small focal bulge of L4-5 intervertebral disc, with no apparent change from the March 1996 MRI study. A CT scan of the lumbar spine conducted on July 1, 1996 further noted a disc herniation at L2-3 on the right of the midline, causing deformity of the anterior lateral aspect of the thecal sac, unchanged from previous study of March 1996.

In order to facilitate a return to work, the Office assigned appellant to a rehabilitation counselor. The Office also referred appellant to Dr. Marshall Matz, a Board-certified neurologist, for a second opinion evaluation to be held on July 30, 1996.

In a report dated July 30, 1996, Dr. Matz noted appellant’s history of injury, medical treatment and symptoms. He opined that the June 26, 1996 MRI study and the July 1, 1996 CT scan were of no clinical significance because they showed a herniated disc on the right at L2-3, inconsistent with appellant’s complaints of left-sided back and leg pain. Dr. Matz further noted that the EMG on May 20, 1996 showed no evidence of a left-sided radiculopathy. On physical examination, he reported that appellant exhibited a “profound degree of symptom magnification and pain behavior.” Dr. Matz noted specifically that appellant refused to bend forward at the waist, complaining of pain, and that appellant was unable to move his left leg without complaints of severe lower back pain. According to Dr. Matz, there was nothing in appellant’s medical records to indicate that the work incident on February 29, 1996 caused appellant’s symptoms and he noted appellant was malingering. He concluded that appellant was capable of returning to work.¹

In a report dated September 12, 1996, Dr. Sarrantos noted that appellant had been under his care since February 29, 1996 for pain radiation down both legs, particularly in the left hip and leg. He indicated that he first diagnosed acute lumbar sacral strain and treatment consisted of conservative management, muscle relaxants, pain medication and physical therapy. Dr. Sarrantos advised that appellant’s symptoms continued and that an MRI scan and myelogram

¹ Dr. Matz reiterated his opinion in a report dated August 9, 1996.

demonstrated herniated discs at L2-3 and L4-5, “which corresponds to the pain described related to both legs.” He concluded that appellant was totally disabled and that surgery was the only option.

In an attending physician’s report dated September 19, 1996, Dr. Harrison noted that he had examined appellant on September 9, 1996 in relation to a work injury “[three] weeks prior to [March 24, 1996] consult.” He diagnosed lumbar radiculopathy and noted appellant’s impairment to be “weakness of the left hip flexors and quads with diminishment of his left knee deep tendon reflex.” He advised Dr. Sarantos that he disagreed with Dr. Metz’s opinion that appellant did not require surgery.

On February 6, 1997 appellant underwent surgery consisting of inferior L2 and superior L3 laminectomy, decompression and resection of a herniated disc.

The Office issued a notice of proposed termination of compensation on October 8, 1997, indicating that it proposed to rescind acceptance of appellant’s claim with respect to the herniated discs at L2-3, and to also terminated appellant’s compensation benefits related to the February 29, 1997 work injury.

Appellant subsequently submitted an October 29, 1997 report from Dr. Harrison who stated:

“Review of your operative note for your L2-3 laminectomy, decompression, resection of herniated disc performed on February 6, 1997 indicates that your back problem was narrowing of the main spinal canal. The nerve structures thusly effected could be on either side of your back or both sides of your back. I believe the difficulty that an independent observer would have with your case would be that a slipped disc to the far right side of your spine would not be expected to cause problems going to the left side of your body. In your case, however, the nerve structures were compressed across your spine.”

In a decision dated November 21, 1997, the Office determined that its prior acceptance of the claim was erroneous and that the weight of the medical evidence, residing with the opinion of Dr. Matz, established that appellant had no continuing disability causally related to the work injury of February 29, 1997.

On January 9, 1998 appellant requested an oral hearing.

In a decision dated February 3, 1998, the Office denied appellant’s oral hearing request on the grounds that the request was not timely made within 30 days of the November 21, 1997 decision. The Office further advised that the issue in the case could be equally well addressed through the reconsideration process.

On March 5, 1998 appellant requested reconsideration and resubmitted a copy of medical report that was already of record.

In a decision dated June 29, 1998, the Office denied appellant's request for a merit review.

The Board finds that the Office failed to meet its burden of proof in rescinding acceptance of the claim with respect to the herniated discs and failed to carry its burden of proof in terminating appellant's compensation benefits.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. This holds true where the Office later decides that it erroneously accepted the claim. To justify rescission of acceptance, the Office must show that it based its decision on new evidence, legal argument and/or rationale.² After it has been determined that an employee has disability casually related to his employment, the Office may not terminate compensation without establishing that the disability has ceased or is no longer related to the employment injury.³

In the instant case, the Office accepted that appellant sustained a lumbar strain, sciatica and herniated discs at L2-3, L4-5 as a result of a lifting injury at work on February 29, 1996. In order to ascertain the nature and extent of appellant's disability, the Office subsequently had appellant examined by Dr. Matz on July 30, 1996. He noted in his report that, based on a June 29, 1996 CT scan and a July 1, 1996 MRI showing a herniated disc on the right at L2-3, he considered appellant's complaints and symptoms of left-sided leg pain and the diagnoses offered by appellant's attending physicians of left-sided sciatica to be inconsistent with the objective evidence. Dr. Matz opined that appellant's "right-sided" herniated disc was not related to his work injury and further stated that appellant's subjective complaints were no more than symptom magnification. The Office concluded that Dr. Matz's opinion was reasoned and represented the weight of the evidence. The Office preceded to rescind acceptance of the claim for the disc herniations at L2-3 and L4-5 and also terminated appellant's compensation related to the February 29, 1996 work injury.

Contrary to the Office's finding, however, the Board does not consider Dr. Matz's opinion to be adequately reasoned to justify the Office's decision to rescind acceptance of appellant's claim as it pertains to the herniated discs at L2-3 and L4-5. The Board notes that Dr. Matz does not explain why appellant's symptoms of left leg pain are not consistent with the MRI test in March 1996 which disclosed that appellant had not only a right-sided herniation, but also a bulging disc on the left side. The July 3, 1996 MRI scan also specifically confirmed "left" posterolateral disc protrusion and small focal disc bulge on the left side of L4-5. Given that there is some indication in the record that appellant has an injury to the left side of his back, Dr. Matz's rationale for dismissing appellant's subjective complaints as malingering is undermined.

Furthermore, although Dr. Matz reported that appellant's symptoms were solely on the left side, appellant's treating physician, Dr. Sarrantos and Dr. Williamson-Link noted that

² *Billie C. Rae*, 43 ECAB 192 (1991).

³ *Frank J. Mela, Jr.*, 41 ECAB 115 (1989); *Mary E. Jones*, 40 ECAB 1125 (1989).

appellant complained of pain in the lower back radiating to both legs, although the pain was more intensified on the left side. Because appellant complained of some right leg pain, Dr. Matz's opinion does not justify rescission of the claim based on the presence of a right-sided herniation as opposed to a left-sided herniation.

Additionally, the Board notes that Dr. Matz never addressed whether appellant sustained at least a low back strain as a result of the February 29, 1996 work injury. The Office specifically accepted the claim for a low back strain; therefore, Dr. Matz was required to provide an opinion as to whether that condition was at least consistent with appellant's subjective complaints. He was further required to address with adequate medical rationale whether appellant had any continuing disability or residuals causally related to his accepted work injury.

Because Dr. Matz does not address the totality of the objective medical evidence and appellant's symptoms, the Board finds Dr. Matz's opinion to be insufficiently reasoned to carry the Office's burden of proof in rescinding acceptance of appellant's claim or to justify termination of appellant's compensation benefits.⁴

The decision of the Office of Workers' Compensation Programs dated November 21, 1997 is hereby reversed.

Dated, Washington, D.C.
April 13, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

⁴ Because the Board finds that the Office erred in rescinding appellant's compensation benefits, the Board declines to address the issue of whether appellant timely requested a hearing as the instant decision renders that issue moot. Although the Office properly denied appellant's reconsideration request, that issue is likewise moot.